

**IN THE UNITED STATES DISTRICT COURT FOR  
THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION**

UNITES STATES OF AMERICA	)	
	)	CASE NO. 3:05-CR-234-A
v.	)	
	)	
TYRONE WHITE	)	

**DEFENDANT'S SUPPLEMENTAL MOTION TO DISMISS COUNT**

COMES NOW the defendant, Tyrone White, by and through his undersigned attorneys of record, and respectfully SUPPLEMENTS his Motion to Dismiss Count (Doc. 103), as follows:

1. The defendant incorporates herein by reference his Motion to Dismiss Count (Doc. 103) as if fully set forth herein.
2. In the December 9, 2005, hearing on the defendant's motions to quash subpoenas (Docs. 86 and 89), the Court heard evidence that the September 2004 meeting, where the recording was played for the government, was a settlement conference. This meeting's purpose was to negotiate a settlement, and to persuade the government to drop its case against the defendant. See also Letter, confirming this fact, from Julian L. McPhillips, Jr., to Todd A. Brown, dated September 9, 2005, and entered as an exhibit at said hearing. Therefore this meeting and its contents are confidential, and may not be used or described at trial.
3. Under Rule 410 of the Federal Rules of Evidence, "... evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who ... was a participant in the plea discussions: ... (4) any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a

plea of guilty...” The recording in question is alleged to have been a statement of the defendant, and therefore is inadmissible at trial under Rule 410, Fed. Rules Evid.

WHEREFORE, above premises considered, the defendant prays this Honorable Court will GRANT his Motion to Dismiss Count 9 of the Superseding Indictment (Doc. 43) now pending in this case.

RESPECTFULLY SUBMITTED this 20th day of December 2005.

TYRONE WHITE  
Defendant

/s/ Julian L. McPhillips, Jr.  
JULIAN L. MCPHILLIPS, JR.  
Alabama Bar No. MCP004

/s/ Allison H. Highley  
ALLISON H. HIGHLEY  
Washington Bar No. 34145  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to:

Todd A. Brown, Esq.  
Assistant United States Attorney  
Post Office Box 197  
Montgomery, Alabama 36101

/s/ Allison H. Highley  
ALLISON H. HIGHLEY